

CENTER FOR DISABILITY ACCESS  
Ray Ballister, Jr., Esq., SBN 111282  
Mark Potter, Esq., SBN 166317  
Phyl Grace, Esq., SBN 171771  
Dennis Price, SBN 279082  
Mail: PO Box 262490  
San Diego, CA 92196-2490  
Delivery: 9845 Erma Road, Suite 300  
San Diego, CA 92131  
(858) 375-7385; (888) 422-5191 fax  
phylg@potterhandy.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**Chris Langer,**

Plaintiff,

v.

**Sabri Shamoun**, in individual and  
representative capacity as trustee of  
the Shamoun Family Trust (10-23-  
96);

**Mary S. Shamoun**, in individual  
and representative capacity as trustee  
of the Shamoun Family Trust (10-  
23-96);

**OB Quik Stop, Inc.**, a California  
Corporation; and Does 1-10,

Defendants.

**Case:** 3:14-cv-01822-LAB-BLM

**First Amended Complaint For  
Damages And Injunctive Relief  
For Violations Of: American's  
With Disabilities Act; Unruh Civil  
Rights Act; California Disabled  
Persons Act; Negligence**

Plaintiff Chris Langer complains of Defendants Sabri Shamoun, in individual and representative capacity as trustee of the Shamoun Family Trust (10-23-96); Mary S. Shamoun, in individual and representative capacity as trustee of the Shamoun Family Trust (10-23-96); OB Quik Stop, Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

**PARTIES:**

1  
2 1. Plaintiff is a California resident with physical disabilities. He is a  
3 paraplegic who cannot walk and who uses a wheelchair for mobility. He has  
4 a specially equipped van with a ramp that deploys out of the passenger side  
5 of his van and he has a Disabled Person Parking Placard issued to him by the  
6 State of California.

7 2. Defendants are, or were at the time of the incidents, the real property  
8 owners, business operators, lessors and/or lessees for the OB Quik Liquor  
9 store ("Store") located at or about 4984 Voltaire Street, San Diego,  
10 California.

11 3. Plaintiff does not know the true names of Defendants, their business  
12 capacities, their ownership connection to the property and business, or their  
13 relative responsibilities in causing the access violations herein complained  
14 of, and alleges a joint venture and common enterprise by all such  
15 Defendants. Plaintiff is informed and believes that each of the Defendants  
16 herein, including Does 1 through 10, inclusive, is responsible in some  
17 capacity for the events herein alleged, or is a necessary party for obtaining  
18 appropriate relief. Plaintiff will seek leave to amend when the true names,  
19 capacities, connections, and responsibilities of the Defendants and Does 1  
20 through 10, inclusive, are ascertained.

**JURISDICTION & VENUE:**

21  
22  
23 4. This Court has subject matter jurisdiction over this action pursuant to  
24 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
25 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

26 5. Pursuant to pendant jurisdiction, an attendant and related cause of  
27 action, arising from the same nucleus of operative facts and arising out of  
28 the same transactions, is also brought under California's Unruh Civil Rights

1 Act, and the California Disabled Persons Act, which acts expressly  
2 incorporate the Americans with Disabilities Act.

3 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
4 founded on the fact that the real property which is the subject of this action  
5 is located in this district and that Plaintiff's cause of action arose in this  
6 district.

7  
8 **FACTUAL ALLEGATIONS:**

9 7. The Plaintiff went to the Store in June of 2014, to shop.

10 8. The Store is a facility open to the public, a place of public  
11 accommodation, and a business establishment.

12 9. Parking spaces are one of the facilities, privileges and advantages  
13 offered by defendants to their customers at the Store.

14 10. Unfortunately, although parking spaces are one of the facilities  
15 available to patrons of the business, there is not a single van-accessible  
16 handicap parking space available for disabled persons who drive vans.

17 11. There are approximately 15 parking spaces in the defendants' parking  
18 lot. Only one of these spaces is marked as reserved for persons with  
19 disabilities. That sole handicap parking stall is nine feet in width and has an  
20 access aisle that measures approximately 3 feet in width.

21 12. On information and belief, plaintiff alleges that a fully compliant van-  
22 accessible parking space, with an eight foot access aisle, once existed at this  
23 location. That handicap parking stall and access aisle has faded beyond  
24 recognition, been paved over, or been removed from reserved status.

25 13. Defendants have no policy or procedure in place to make sure that the  
26 parking spaces remain compliant and suitable for disabled customers.

27 14. Additionally, the sole handicap parking stall and access aisle on the  
28 property are not level with each other because there is a built up curb ramp

1 that runs into the access aisle and the parking stall. This results in slopes  
2 greater than 2.2%.

3 15. The defendants have failed to maintain in working and useable  
4 condition those features required to provide ready access to persons with  
5 disabilities.

6 16. The plaintiff personally encountered these problems. This inaccessible  
7 condition denied the plaintiff full and equal access and caused him difficulty  
8 and frustration. The plaintiff has a specially equipped van. He needs a full  
9 eight foot access aisle to safely and effectively deploy the ramp from his van  
10 and to enter and exit his vehicle. Additionally, he needs to have a flat and  
11 level parking stall and access aisle to safely use his ramp. A slope surface  
12 causes his van and or ramp to tilt, creating difficulty and the risk of injury.  
13 Additionally, he will not park in non-accessible parking spaces for fear of  
14 being trapped out of his van by a car parking next to him and blocking the  
15 space where his ramp must deploy.

16 17. Plaintiff would like to return and patronize the Store but will be  
17 deterred from visiting until the defendants cure the violations.

18 18. Additionally, the defendants have a practice of keeping merchandise  
19 and merchandise displays in the merchandise aisles, restricting the clear  
20 passage with to less than 36 inches in and throughout the Store. Although the  
21 plaintiff did not personally encounter this violation and is not seeking  
22 damages related to this claim, the plaintiff has been made aware of it, and  
23 this violation will cause him difficulty if not remedied.

24 19. Additionally, on information and belief, the plaintiff alleges that the  
25 failure to remove these barriers was intentional because: (1) these particular  
26 barriers are intuitive and obvious; (2) the defendants exercised control and  
27 dominion over the conditions at this location and, therefore, the lack of  
28 accessible facilities was not an "accident" because had the defendants

1 intended any other configuration, they had the means and ability to make the  
2 change.

3  
4 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
5 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against  
6 all defendants (42 U.S.C. section 12101, et seq.)

7 20. Plaintiff repleads and incorporates by reference, as if fully set forth  
8 again herein, the allegations contained in all prior paragraphs of this  
9 complaint.

10 21. Under the ADA, it is an act of discrimination to fail to ensure that the  
11 privileges, advantages, accommodations, facilities, goods and services of  
12 any place of public accommodation is offered on a full and equal basis by  
13 anyone who owns, leases, or operates a place of public accommodation. See  
14 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 15 a. A failure to make reasonable modifications in policies, practices,  
16 or procedures, when such modifications are necessary to afford  
17 goods, services, facilities, privileges, advantages, or  
18 accommodations to individuals with disabilities, unless the  
19 accommodation would work a fundamental alteration of those  
20 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 21 b. A failure to remove architectural barriers where such removal is  
22 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
23 defined by reference to the ADAAG, found at 28 C.F.R., Part  
24 36, Appendix "D."
- 25 c. A failure to make alterations in such a manner that, to the  
26 maximum extent feasible, the altered portions of the facility are  
27 readily accessible to and usable by individuals with disabilities,  
28 including individuals who use wheelchairs or to ensure that, to

1 the maximum extent feasible, the path of travel to the altered  
2 area and the bathrooms, telephones, and drinking fountains  
3 serving the altered area, are readily accessible to and usable by  
4 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

5 22. Any business that provides parking spaces must provide handicap  
6 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in  
7 every eight of those handicap parking spaces but not less than one must be a  
8 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991  
9 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six  
10 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

11 23. Here, the lack of a van-accessible handicap parking space is a  
12 violation of the law.

13 24. Under the 1991 Standards, parking spaces and access aisles must be  
14 level with surface slopes not exceeding 1:50 (2%) in all directions. 1991  
15 Standards § 4.6.2.

16 25. Here, the access aisle is not level and has a ramp taking up part of the  
17 access aisle. Under the 2010 Standards, access aisles shall be at the same  
18 level as the parking spaces they serve. Changes in level are not permitted.  
19 2010 Standards § 502.4.

20 26. A public accommodation must maintain in operable working  
21 condition those features of its facilities and equipment that are required to be  
22 readily accessible to and usable by persons with disabilities. 28 C.F.R. §  
23 36.211(a).

24 27. Here, the failure to ensure that the accessible parking space was  
25 available and ready to be used by the plaintiff is a violation of the law.  
26  
27  
28

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH**  
 2 **CIVIL RIGHTS ACT** (On behalf of plaintiffs and against all defendants)  
 3 (Cal Civ § 51-53)

4 28. Plaintiff repleads and incorporates by reference, as if fully set forth  
 5 again herein, the allegations contained in all prior paragraphs of this  
 6 complaint.

7 29. Because the defendants violated the plaintiffs' rights under the ADA,  
 8 they also violated the Unruh Civil Rights Act and are liable for damages.  
 9 (Civ. Code § 51(f), 52(a).)

10 30. Because the violation of the Unruh Civil Rights Act resulted in  
 11 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
 12 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
 13 55.56(a)-(c).)

14  
 15 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE**  
 16 **CALIFORNIA DISABLED PERSONS ACT** (On behalf of plaintiffs and  
 17 against all defendants) (Cal Civ. § 54-54.8)

18 31. Plaintiff repleads and incorporates by reference, as if fully set forth  
 19 again herein, the allegations contained in all prior paragraphs of this  
 20 complaint.

21 32. Because the defendants violated the plaintiff's rights under the ADA,  
 22 they also violated the Disabled Persons Act and are liable for damages. (Civ.  
 23 Code § 54.1(d), 54.3(a).)

24 33. Because the violation of the Disabled Persons Act resulted in  
 25 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
 26 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
 27 55.56(a)-(c).)

1 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of  
2 plaintiff and against all defendants)

3 34. Plaintiff repleads and incorporates by reference, as if fully set forth  
4 again herein, the allegations contained in all prior paragraphs of this  
5 complaint.

6 35. The Defendants had a general duty and a duty arising under the  
7 Americans with Disabilities Act and the Unruh Civil Rights Act and  
8 California Disabled Persons Act to provide safe, convenient, and accessible  
9 facilities to the plaintiffs. Their breach of this duty, as alleged in the  
10 preceding paragraphs, has caused injury and damage as alleged above.

11  
12 **PRAYER:**

13 Wherefore, Plaintiff prays that this court award damages and provide  
14 relief as follows:

15 1. For injunctive relief, compelling defendants to comply with the  
16 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
17 Plaintiffs are not invoking section 55 of the California Civil Code and is not  
18 seeking injunctive relief under the Disabled Persons Act at all.

19 2. Damages under the Unruh Civil Rights Act and/or the California  
20 Disabled Persons Act which damages provide for actual damages and a  
21 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both  
22 acts, simultaneously, and an election will be made prior to or at trial.



1           3. Reasonable attorney fees, litigation expenses and costs of suit,  
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

3  
4 Dated: August 19, 2014

CENTER FOR DISABILITY ACCESS

5  
6 By: 

7 Mark Potter, Esq.  
8 Attorneys for Plaintiff  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28